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March 27, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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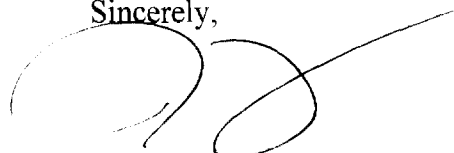
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Enclosed, on behalf of Tennessee Valley Radio, Inc., are an original and four copies of its Petition for Reconsideration.

Should there be any questions in connection with this transmittal, please do not hesitate to contact the undersigned or M. Scott Johnson at (202) 408-7122.

Sincerely,



Jocelyn R. Roy

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

¹⁹ 47 C.F.R. § 1.106.

I. Background

1. WPZM-FM is currently licensed to operate on Channel 227C1 at Tullahoma, Tennessee. On May 30, 1998, TVRI filed the above-referenced Petition for Rule Making ("Petition"), pursuant to Section 1.420 (i) of the Rules,^{2/} seeking modification of its license to specify Madison, Alabama as its new community of license. Because the station is currently short-spaced by 4 km to Station WGMZ at Channel 226A, Glencoe, Alabama, as a direct result of a site change requested by WGMZ under Section 73.215 of the Commission's rules, a waiver of Section 73.207 of the Commission's rules was also requested. No other changes were proposed and the proposal did not create any new, nor exacerbate any existing, short-spacing requirements.

2. In support of the Petition TVRI noted that there are currently two radio stations licensed to Tullahoma, including WPZM-FM, and one AM radio station licensed to Madison.^{3/} A modification of WPZM's community of license to Madison would give Madison its first local FM facility, without depriving Tullahoma of radio service. Additionally, TVRI noted that a new Class A FM channel is available for allotment to Tullahoma to provide added local service as currently proposed in MM Docket No. 96-213. Finally, TVRI noted that the rapid population growth and demographic information available for Madison clearly demonstrate that Madison is in need of an FM facility.

^{2/} 47 C.F.R. § 1.420 (i).

^{3/} Since the filing of the Petition, American Family Station was granted a construction permit for a new non-commercial FM facility to operate on Channel 203A with 1.9kW at an HAAT of 54 meters at Tullahoma.

3. As authority for the FCC's recognition of the public interest benefits of approving a request to change a station's community of license where no new short-spacings are created or exacerbated and there is no potential for an increase in interference between the currently short-spaced stations, TVRI cited the Commission's decision in *Newnan and Peachtree City, Georgia*,^{4/} where the FCC granted permission for a short-spaced station, proposing no relocation in its transmitter site, to change its community of license

II. Discussion

4. The Bureau noted in the Return Letter that although TVRI, like the petitioner in *Newnan and Peachtree City*, did not propose the relocation of its transmitter site, "the exception to the requirement that an allotment at a new community of license comply with Section 73.207 of the Rules is limited to the short-spaced FM stations in existence prior to the creation of the FM Table of Allotments."^{5/} In addition, the Bureau noted that TVRI had not demonstrated any public interest benefit that would "justify the expenditure of administrative resources necessary to undertake a rule making proceeding."^{6/}

5. Although correct that *Newnan and Peachtree City* involved a station licensed prior to the adoption of the FM Table of Allotments, the reliance on that fact as a basis for the return of TVRI's Petition is misplaced. The Bureau's distinction between grandfathered stations, *i.e.* pre-Table of Allotment stations, and stations operating pursuant to other waivers of the minimum distance separation requirements, including stations grandfathered pursuant to other

^{4/} *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Newnan and Peachtree City, Georgia)*, MM Docket No. 90-138. RM 7040, 7 FCC Rcd. 6307 (1992).

^{5/} Return Letter at ¶3.

^{6/} Return Letter at ¶4.

rule changes (e.g. § 73.207), is illogical and inherently arbitrary, especially when no changes to the station's site or operating facilities is proposed. Further, although the Bureau noted that the proposal "does not improve the existing short-spacing,"^{7/} Section 73.207 of the Commission's rules provides that waivers may be accepted, "provided that such applications propose to *maintain* or improve that particular spacing deficiency."^{8/} TVRI's proposal would maintain a currently authorized short-spacing allotment, and is therefore fully consistent with the waiver standard under Section 73.207.

6. The Bureau noted that there is "no overriding public interest benefit in expanding *Newman [sic] and Peachtree City* in order to create a new short-spaced allotment in this proceeding."^{9/} However, as noted above, TVRI's proposal would not create any *new* short-spacing; the short-spacing that would be "created" by the proposal is the same as the short-spacing that currently exists. Characterizing the short-spacing as "new" simply does not reflect the reality of the proposal.

7. Further, as noted in TVRI's Petition, the short-spacing that exists between WGMZ and WPZM was created by WGMZ; accordingly, WGMZ, not WPZM, is subject to the more stringent requirements with respect to the contour protection of other short-spaced stations, since WGMZ is the station which currently has a restriction on its license. To categorize WPZM as a short-spaced station subject to Section 73.215 restrictions would be tantamount to an involuntary modification of license. The Commission has held that one of the reasons

^{7/} Return Letter at ¶ 4.

^{8/} 47 C.F.R. § 73.207 (a) (emphasis added.).

^{9/} Return Letter at ¶3.

underlying the adoption of the “maximum protection” of the contour criteria of § 73.215 was so that stations that were encroached upon were not precluded from improving their facilities because of another station’s voluntary short-spacing.^{10/} Here, of course, TVRI does not propose technical changes to its facility, making it even *more* appropriate that TVRI not be disadvantaged because of short-spacing created by another facility.

8. In a related context, the Commission has permitted the substitution of channels involving short-spaced stations where no additional interference, under Section 73.215 of the rules, was caused.^{11/} In *Gainesville Florida*, the Commission permitted a channel substitution involving short-spaced stations, which were grandfathered pursuant to changes in the Commission’s minimum spacing requirements, based upon the fact that the new channel would still comply with the Commission’s protection ratios and, therefore no additional interference would be caused. Similarly, WPZM’s proposal would not cause any additional interference to any protected station since no technical changes are proposed. Accordingly, there should be no difference in treatment between stations grandfathered prior to the adoption of the FM Table of Allotments and any other grandfathered short-spaced stations, where the result, no additional interference, is the same.

9. When evaluating a proposal to change a community of license to determine whether such change would be in the public interest, in cases where the FM priorities of first or second aural service or first local service are not triggered,^{12/} the Commission is required to

^{10/} See e.g. *West Wind Broadcasting, Inc. Applications for Construction Permit to Modify Facilities of Station WXCV (FM), Homosassa Springs, FL, and for License to Cover Construction Permit for Modification of Facilities of Station WXCV (FM), Homosassa Springs, FL*, 11 FCC Rcd 4101 (1996).

^{11/} *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, St. Augustine, St. Augustine Beach and Gainesville, Florida*, 7 FCC Rcd 7657 (1992).

^{12/} See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

examine a number of factors relevant to the comparison of the communities involved. The Commission considers the availability of both FM and AM services in the relevant communities^{13/} as well as such factors as the relative size of the proposed communities and their growth rates.^{14/} Additionally, the Commission must consider the best overall arrangement of allotments, including the availability of other services in the communities affected by the proposed changes.^{15/} The statistical analysis provided by TVRI clearly indicated that the proposal favors a change in community of license to Tullahoma given the population and employment growth differences between Tullahoma and Madison; the continued availability of radio services in Tullahoma; and the dearth of radio services in Madison.

10. For example, TVRI cited U.S. Department of Commerce statistics and information from the city of Madison analyzing its developmental growth to demonstrate that Madison experienced a population surge of 27% from 1990 to 1994. In contrast, TVRI noted that the population of Tullahoma grew by only 5% during the same time period. Coupled with the fact that, as explained fully in TVRI's Petition, Tullahoma would not be deprived of its only local transmission, nor would it suffer a significant loss in radio service, a head to head comparison of the two communities indicates that the overall public interest would be better served by the addition of an FM facility in Madison. Accordingly, grant of TVRI's proposal would be consistent with the Commission's policies and advance the Commission's 307(b) allotment priorities.

^{13/} See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

^{14/} See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92, fn. 8 (1982).

^{15/} See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).

CONCLUSION

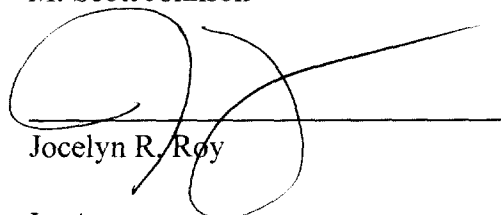
11. The decision to return TVRI's Petition did not give proper weight to the merits of TVRI's public interest arguments, and supporting evidence, indicating its proposed change in community of license to Madison from Tullahoma would better serve the public interest and advance the Commission's 307(b) allotment goals. Indeed, the Return Letter fails to address any of the factors relevant to a comparison of the two communities which were set forth in the Petition.

WHEREFORE, Tennessee Valley Radio, Inc. respectfully requests that the Commission grant its Petition for Reconsideration in this matter.

Respectfully submitted,

TENNESSEE VALLEY RADIO, INC.

By: 
M. Scott Johnson

By: 
Jocelyn R. Roy
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